

April 1964

Conflict of Laws—Law Governing Testamentary Trusts Involving Movable

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Recommended Citation

George C. Hughes III, *Conflict of Laws—Law Governing Testamentary Trusts Involving Movable*, 66 W. Va. L. Rev. (1964).

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CASE COMMENTS

Conflict of Laws—Law Governing Testamentary Trusts Involving Movables

Ps, trustees of testamentary trust, brought suit for a declaratory judgment construing the will and setting forth their duties under the will. The lower court entered judgment providing in part that establishment, maintenance, and operation of certain clinic-hospitals as described in the will in Texas would violate Texas law but further decreed that board of trustees was authorized to carry out the clinic-hospital provisions in California, and the Texas Attorney General appealed. *Held*, reversed. Testamentary trust which had its situs in Texas, was composed of property located in Texas, was established by testator residing in Texas and which was to be managed by trustees residing in Texas, must be governed by Texas law. The appellate court instructed the trustees to disregard the provisions concerning the establishment and maintenance of the hospitals not only in Texas but also in California. *Wilson v. Smith*, 373 S.W.2d 514 (Tex. Civ. App. 1963).

The principal case presents the interesting question of what law should govern testamentary trusts involving personal property where multi-state contacts are involved. The problem largely stems from the difficulty of determining which of the many and varied factors usually present should be controlling.

The general rule is that, as applied to testamentary trusts involving tangible movable property, the law of the testator's domicile governs. This is the prevailing view throughout the various jurisdictions of this country. *Whitney v. Dodge*, 105 Cal. 192, 38 Pac. 636 (1894); *Hussey v. Sargent*, 116 Ky. 53, 75 S.W. 211 (1903); GOODRICH, CONFLICT OF LAWS § 159 (3d ed. 1949); RESTATEMENT, CONFLICT OF LAWS § 298 (1934). Various reasons have been advanced for this rule, but none seems to be more satisfactory than that the testator is presumed to be familiar with the laws of his domicile; to have prepared his will in the light of those laws, and to apply any other law would be at the great risk of defeating his intent, unless it is manifest that the testator had the laws of some other place, or country, in mind. *In re Chappell*, 124 Wash. 128, 213 Pac. 684 (1923).

Although the above rule seems to be firmly established, there is a recent judicial trend toward its modification. *Martin v. Haycock*, 22 N. J. 1, 123 A.2d 223 (1956); *In re Henderson*, 40 N.J. Super. 297, 123 A.2d 78 (1956). Commentators, for example, urge that other factors such as the language of the will, the implied intention of the testator, the place of execution of the will and the domicile of the trustee at the time the will was executed should be given serious consideration together with the testator's domicile. LAND, TRUSTS IN THE CONFLICT OF LAWS § 36.1 (1940); RESTATEMENT, CONFLICT OF LAWS § 298 (Tent. Draft No. 5, 1959). In this regard, Colorado has held that the law of the state of the testator's domicile at the time of the execution of the will is but one circumstance, not necessarily controlling, which aids the court of another state in construing the will and ascertaining the intention of the testator. *Blatt v. Blatt*, 243 Pac. 1099 (Colo. 1926).

In the instant case, the will in question provided for the establishment of clinic-hospitals wherein chiropractors licensed in California would do research and study and would apply methods of nutrition, blood chemistry, physical therapy, radionics, electricity, and other methods of nonmedical healing for treating human illness. The court examined the various contacts present and found that such a provision would violate both civil and criminal statutes of Texas and would therefore be contrary to that state's public policy. Therefore, such a provision was invalid and being invalid, was void and unenforceable everywhere. Noting the marked emphasis placed upon the dominant contacts involved, it is submitted that this decision is in accord with the recent thinking in this area.

There is however, a qualification to the rule set forth in the principal case. It arises in situations where the trust violates the rule against perpetuities of the testator's domicile, but does not violate that of the state in which the trust is to be administered. For example, in *Hope v. Brewer*, 136 N.Y. 126, 32 N.E. 558 (1892), the will of the testator, a resident of New York, directed his executors to convert his New York property and pay over the proceeds to Scottish trustees for the purpose of founding an infirmary for the care of the sick in Scotland. The disposition was void under New York law on the ground of indefiniteness of beneficiaries, but under the law of Scotland it was valid. The appellate court upheld the validity of the trust, saying that such a gift to a foreign charity is not void. The court further said that where there is a trustee competent to

take and hold and the trust is capable of being executed and enforced according to the law of the place to which the property was to be transmitted under the will of the donor the disposition is perfectly valid. This decision represents the majority view in this area in refusing to upset a charitable trust which does not offend the policy of the state of domicile. *Cavers, TRUSTS INTER VIVOS AND THE CONFLICT OF LAWS*, 44 HARV. L. REV. 161, 167 (1931).

The West Virginia court has never decided the precise question raised by the principal case. It did however, approach the problem in *American Bible Soc'y v. Pendleton*, 7 W.Va. 79 (1873). In that case *M*, living in Virginia, made a deed conveying land in Pennsylvania to *P* to be sold, directing that the proceeds of the sale should be held by *P* subject to the written order of the grantor. Subsequently *M* made a will disposing of the proceeds of the land, which will was admitted to probate in Virginia. The court held that the validity of any bequest of the proceeds of the land must be determined by the laws of Virginia in force when the will took effect. This decision would seem to favor the orthodox rule enunciated earlier.

In conclusion then, we may say that the orthodox rule is undergoing some modification. Although it is only speculation, it is submitted that West Virginia would follow this change and adopt the rule presented by the principal case.

George Charles Hughes, III

Conflict of Laws—Appointment of a Valid Agent for Service of Process

Ds leased two incubators from *P*, a corporate lessor with its principal place of business in New York City. The lease was a form lease signed in Michigan designating the wife of one of the corporate lessor's officers as agent for the purpose of accepting service of any process within the State of New York. The form lease was less than one and a half pages long and the clause designating the agent to accept the service of process was just above the signatures of *Ds*. The above clause in no way stated that the designated agent was obligated, or had duty to give notice to *Ds* if service of process was served. *P* later sued *Ds* in the United States District Court for the Eastern District of New York for an alleged default of the payments of the lease. The agent, upon receipt of service of process from the